Supreme Court, U.S.
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CS.NO._____

UNITED STATES SUPREME COURT

PETITIONER,

THOMAS G. DEAN

V.
RESPONDENTS,

CHASE MANHATTAN MORTGAGE CORP., RESURGENCE MARKETING & REAL ESTATE, FORREST HOMES, US DEPT. OF HUD, US DISTRICT JUDGE WILLIS B. HUNT, AND THE CLAIRMONT LODGE.

PETITION FOR WRIT OF CERTIORARI TO ELEVENTH CIRCUIT COURT OF APPEALS

APPENDIX

THOMAS G. DEAN
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ATLANTA GEORGIA 30329
(404) 929-9437
THE PETITIONER

Thomas G. Dean

69 pp

[DO NOT PUBLISH]

THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 00-14275
Non-Argument Calendar

D.C. Docket No. 99-02218-CV-JEC-1

THOMAS G. DEAN

Plaintiff-Appellant

versus

THE CHASE MANHATTAN BANK,
FORREST HOMES, et al.,

Defendant-Appellees

Appeal from the United States District Court
for the Northern District of Georgia

(June 6, 2001)

Before EDMUNDSON, BARKETT and WILSON,

Circuit Judges.

PER CURIAM:

We find no merit to Thomas G. Dean's Appeal of the dismissal of his pro se amended complaint alleging violations of his civil rights and the Fair Housing Act, 42 USC ss 3601, 1981, 1982, 1985.

The dismissal of the amended complaint against Chase Manhattan Mortgage Corporation without prejudice for failure to effect service of process was not an error because Chase challenged Dean's service upon Chase, a corporation, as required pursuant to Fed. R. Civ. P. 4(h)(1) and (e)(1) within 120 days after filing his amended complaint as required by Fed. R. Civ. P. 4(m). See Schnabel v. Wells, 922 F.2d 726, 728 (11th Cir. 1991); Bowers v. Economation Inc., 208 Ga. App. 661, 663,431 S.E.2d 420,422 (1993); Prisco v. Frank, 929 F.2d 603,604 (11th Cir. 1991).

The district court did not err in dismissing the amended complaint against Clairmont Lodge for failure to state a claim under Fed. R.Civ. P. 12(b)(6) because

Dean's conclusory allegation that Clairmont intended to racially discriminate against him was contradicted by materials upon which Dean himself relied to support his ss 1981 and ss 1982 claims and Dean failed to state a claim under the Fair Housing Act under a theory of racial discrimination by disparate impact. Gonzalez v. Lee County Housing Authority, 161 F.3d 1290, 1300 n. 35 (11th Cir 1998) (ss 1981 claims); Associated Builders, Inc. v. AlabamaPower Co., 505 F.2d 97, 100 (5th Cir 1974); United States v. Mitchell, 580 F.2d 789, 791-92 (5th Cir 1978).

The district court did not err in dismissing the amended against Forrest Homes and Resurgence Marketing & Real Estate, Inc. for failure to state a claim under Fed. R.Civ. P. 12(b)(6) because Dean's conclusory allegation that he was qualified to purchase a home from Forrest and Resurgence is contradicted by materials upon which Dean himself relied to support his Fair Housing Act claim. Herron v. Blackwell, 908 F.2d 864,870 (11

Cir.1990); Associate Builders, 505 F.2d at 100; Conely, 355 U.S. at 45-46; 78S.Ct. at 99, 102.

The court did not err in finding that it lacked subject-matter jurisdiction over Dean's claims against the Department of Housing & Urban Developement/FHA under the doctrine of sovereign immunity because Dean sought money damages against HUD. Raulerson v. United States, 786 F.2d 1090,91-92(11th Cir 1986); Panola Land Buyers Assoc. v. Shuman, 762 F.2d 1550, 1554 (11th Cir 1985); Unimex, Inc v. United States Dept. of Housing and Urban Developement, 594 F.2d 1060, 1061 (5th Cir 1979).

The court did not err in finding that it lacked subject-matter jurisdiction over Dean's claims against Judge Willis B. Hunt under the doctrine of absolute judicial immunity because Dean sought money damages against Judge Hunt for actions took in his judicial capacity. Bolin v. Story, 225 F.3d 1234, 1239 (11th Cir 2000).

{end of page three}

The district court did not abuse its discretion in denying Dean appointment of "Attorney General" or other counsel for assistance with his civil claim under the Fair Housing Act. Shah87 F.3d at 1271; United States v. Bob Lawrence Realty, Inc., 474 F.2d 115, 125 n. 14 (5th Cir.), cert. denied, 414 U.S. 826 (1973); Dean v. Barber, 951 F.2d 1210, 1216 (11th Cir. 1992).

Finally, we conclude that the district court did not err in dismissing Dean's motion for costs as moot after his claims had been dismissed as to all defendants. Fed. R. Civ. P. 55.

AFFIRMED.

{end of page four}

PETITIONER' EXHIBIT "1"

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

THOMAS G. DEAN,

Plaintiff, CIVIL FILE NO.

v. 1:99-CV-2218A-JEC

CHASE MANHATTAN MORTGAGE CORP., FORREST HOMES, RESURGENCE MARKETING & REAL ESTATE INC., UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPEMENT, WILLIS B. HUNT, AND CLAIRMONT LODGE,

Defendants.

ORDER

This case is presently before the court on defendant Clairmont Lodge's Motion to Dismiss [12], defendant Department of Housing and Urban developement's Motion to Dismiss [18], defendant Chase Manhattan Bank and Chase Manhattan Mortgage Corporation's Motion

to Dismiss [20], defendant Forrest Homes Inc.'s Motion to Dismiss [21], defendant Resurgence Marketing and Real Estate, Inc.'s Motion to Dismiss [22], plaintiff's Motion for Cost of Personal Service [28], defendant Chase Manhattan Bank and Chase Manhattan Mortgage Corporations's Motion to Extend Time to respond to Plaintiff's Motion for Costs [29], and defendant Willis B. Hunt's Motion to Dismiss [40]. The Court has reviewed the record and the arguments of the parties and, for reasons set forth below, concludes that defendant Clairmont Lodge's Motion to Dismiss [12] should be **GRANTED,** defendant Department of Housing and Urban Develepement's Motion to Dismiss [18] should be **GRANTED,** defendant Chase Manhattan Bank and Chase Manhattan Mortgage Corporation's Motion to Dismiss [20] should be **GRANTED WITHOUT PREJUDICE,** defendant Forrest Homes, Inc.'s Motion to Dismiss [21] should be **GRANTED,** defendant Resurgence Marketing & Real Estate Inc.'s Motion to Dismiss [22]

should be **GRANTED,** plaintiff's Motion for Cost of Personal Service [28] should be **DENIED AS MOOT,** defendant Chase Manhattan Bank and Chase Manhattan Mortgage Corporation's Motion to Extend Time to Respond to Plaintiff's Motion for Cost [29] should be **DENIED AS MOOT,** and defendant Willis B. Hunt's Motion to Dismiss [40] should be **GRANTED.**

BACKGROUND

Plaintiff, proceeding pro se, filed suit on sugust 30, 1999 against defendants Chase Manhattan Bank, Forrest Homes,[1]

1 Forrest Homes, Inc. is the company that owned the home that plaintiff attempted to purchase. It is undisputed that Forrest entered into a "purchase Home Agreement" for plaintiff to purchase a home in the

{end of pages one & two}

Resurgence Marketing and Real Estate, Inc., 2 the United States Department of Housing and Urban Developement/FHA, Judge Willis B. Hunt, and Clairmont Lodge. (compl. [1] at 1) In his complaint, plaintiff makes several general allegations against all defendants, arguing that they discriminated against him due to his race in violation of "the Fair Housing Act, 42 U.S.C. ss 3601 et seq." (Id. at P. 2) In addition, plaintiff claims that "defendants" also discriminated against him in violation of 42 U.S.C. ss 1981, 1982 & 1985(c)." (Id) Specifically, plaintiff claims that he attempted to engage in real estate transactions on June 8, 1999, that he met all qualifications for purchasing the property, that "defendants" refused to do business with him and that the property remains available for sale. (Id. at P.3) In addition, plaintiff asserts that "defendants" advertise homes loans available at "1% down & possible 5.5% interest" but refused to render such an interest rate to plaintiff because "defendants" refused to do business with him. (Id. at P.4)

Rivercrest subdivision. Pl.'s Resp. to Mand. Disclosures [2] at Ex. C-1; Forrest Mot. to Dismiss [21] at Ex. A.) According to Micheal Adamson, CEO of Forrest, every homeowner in Rivercrest is black, the same race as plaintiff (Id. at Adamson Aff. at P. 7)

2 Resurgence Marketing and Real Estate, Inc. is the brokerage company that served as the agent facilitating plaintiff's attempted purchase of the Forrest home. (Pl.'s Resp. to Mand Disclosure [2] at Ex. C-1; Forrest Motion to Dismiss [21] at Ex. A.)

{end of page three}

With regard to a separate transaction, plaintiff contends that he attempted to rent an apartment from the Clairmont Lodge on April 26, 1999 for a certain rate. (Id. at P. 5) At some point after accepting the rate plaintiff claims that the Clairmont Lodge changed the rate and committed fraud in violation of "42 USCA ss 3601, 1981, 1982." (Id) In additional, plaintiff alleges that "he has experienced parading outside his apartment at the Claimont Lodge . . . and or verbal assaults because of plaintiff's having complained to the accounting office of Clairmont Lodge about the rate discrepancy." (Id.) Plaintiff also asserts that the "paraders" are parading outside his apartment due to his filing of two previous lawsuits in front of defendant Judge Hunt, 1:98-CV-2901 WBH and 1:99-CV-1127-WBH. (Id.) Finally, plaintiff alleges that these paraders are in front of his apartment " because of racial discrimination against plaintiff." (Id.)

Finally, plaintiff claims that Judge Hunt refused to appoint him an attorney in civil action number 1;98-CV-

2901-WBH "so that defendant Hunt may satisfy his appetite to discriminate against the plaintiff to display his racial prejudice against plaintiff and other minorities." (Id. at P.6.) Plaintiff contends that the denial of plaintiff's motion for appointment of counsel violated his rights under 42 USCA ss 3604(f)(3)(B)." (Id.)

{end of page four}

On October 18, 1999, plaintiff filed a document entitled "Prima Facie Civil Rights Complaint" which purports to be an amended complaint. (Am. Compl. [11] at 1) This document is nearly identical to the original complaint with the substitution of Chase Manhattan Mortgage Corporation for Chase Manhattan Bank (Id.) In every other respect, the complaint is identical. (Compare Compl. [1] with Am. Compl. [11].)

Each defendant has filed a separate motion to dismiss in lieu of filing an answer to plaintiff's complaint. the Court will address each motion in turn, setting out the arguments in support of the motions to dismiss below.

Finally, on December 14, 1999, plaintiff filed a Motion for Cost of Personal Services of Plaintiff. (Pl.'s Mot. for Costs [28] at 1) In this motion, plaintiff request this court to grant him 971,103.95 in costs. (Id.) Plaintiff claims that defendants' failure to file an answer in this case warrants an entry of default against them under "rules 4(b), 4(c) (D), 11, 55, & 56" of the Federal Rule of Civil Procedure. (Id.) As the court has determined that plaintiff has failed to state a claim upon which relief can be granted against any defendant, this motion is **DENIED AS MOOT.**

{end of page 5}

DISCUSSION

I. Clairmont Lodge, Chase Manhattan Mortgage, and Resurgence Marketing and Real Estate's Motion to Dismiss Under Rule 12(b)(5)

Clairmont Lodge, Chase Manhattan Mortgage Company (hereinafter "chase Mortgage"), and Resurgence Marketing and Real Estate ("hereinafter Resurgence") have filed motions to dismiss based upon plaintiff's app-

arent failure to effecuate service of process in accordance with the Federal Rules of Civil procedure. In lieu of personally serving defendants, plaintiff mailed a copy of the original complaint, a summons, a copy of plaintiff's mandatory disclosures, acopy of plaintiff's motion for appointment of counsel, a discovery request, and a request for acknowledgement of service of process by certified mail to the Claimont Lodge at 10108 Cannon Farmhill Rd. Atlanta Georgia 30349. (Pl.'s Aff. of Ret. of Serv. of Process [8] at P. 5, Ex. RS 14.) Likewise, plaintiff mailed the same information to Chase Manhattan Mortgage at 1777 Phoenix Pkwy # 200, Atlanta, Georgia 30349 and to Resurgence at 4064B Nine Mc Farland Drive, Alpharetta, Georgia 30004. (Pl's Aff. of Serv. of Process [8] at Ex. RS2 & RS8; Resurgence Mot. to Dismiss [22] at Ex. A.)

{end of page six}

By sending the "Notice of Acknowledgement of Receipt of Summons and Complaint" form, plaintiff attempted

to comply with Rule 4(d) of the Federal Rules of Civil Procedure regarding "waiver of service."

Upon filing his amended complaint, plaintiff attempted to re-serve defendants Clairmont Lodge, Chase Mortgage, and Resurgence. Instead of relying on the mail this time, plaintiff hired a deputy sheriff to personally deliver a copy of the complaint and summons to Clairmont Lodge's property Management office, to Chase Mortgage' Atlanta office, and to Resurgence's Alpharetta office.

The three defendants claim that plaintiff's first attempt to serve process is insufficient under rule 4(d) of the Federal Rules of Civil Procedure, as plaintiff failed to include a proper waiver of service form under rule 84, failed to include a self addressed, stamped envelope, and failed to enclose two copies of the notice and request for waiver. (See, e.g., Clairmont Lodge's Mot. to dismiss [12] at 2) In addition, defendants contend that plaintiff failed to comply with Rule 4(e) and (h) for service of process on a corporation because he failed to de-

liver a copy of the summons and complaint to an agent authorized to accept service of process and failed to deliver a copy of the summons and complaint to an officer or managing agent of the corporation. (See id. at 3) Moreover, the three defendants contend that plaintiff's renewed effort to serve it with process through the use of the sheriff's deputy was equally faulty, as plaintiff failed to serve the proper agent for receiving service of process. (See Clairmont Lodge's Reply Br. in Supp. of Mot. to Dismiss [19] at 3; Resurgence's Mot. to Dismiss [22] at 6-7.)

It is clear that the waiver of service form failed to comply with Rule 4(d) in two respects.[3] First, plaintiff's mailings were not "addressed directly . . . to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process)" of Clairmont Lodge, Chase Mortgage, or Resurgence. Fed. R. Civ. P. 4(d)(2)(A). Indeed, plaintiff did not comply with Rule 4(d)(2), as he sddresses the notice and

request for waiver to "Clairmont Lodge," "Chase Manhattan Mortgage," and "Resurgence Marketing and Real Estate Inc. " and not specifically to an agent or officer

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3 Chase Mortgage also point out that plaintiff failed to utilize the correct form, under Rule 84, in order to obtain a waiver from the former. Indeed, Form 1A promulgated under rule 84 of the Federal Rules of Civil Procedure is the appropriate form to utilize when attempting to obtain a waiver of service. Moreover, Chase Mortgage notes that plaintiff did not include the pre-addressed and postage pre-paid envelope for return of service as set forth in Rule 4(d)(2)(G) and Form 1A. (Chase Defs.' Motion to Dismiss [20] at 6.)

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of the corporation. (See Pl.'s Aff. in Supp. of Return of Serv. [8] at Exs. RS2, RS4, RS7, RS8, RS10, RS14.)

Secondly, in his notice, plaintiff incorrectly demanded that the three defendants "complete the acknowledgement part of the form and return one copy of the completed form to plaintiff within 20 days." (Id. at 6) Rule 4 (d)(2)(F) states that the notice "shall allow defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent." Clearly, plaintiff's notice and waiver did not comply with Rule 4(d)(2)(F). In addition, Chase Mortgage Maintain that, in his notice plaintiff stated, " If you do complete and return this form . . . [you] must answer the complaint within 20 days." (Chase Defs.' Mot. to Dismiss [20] at 6) It is clear that Rule 4(d)(3) permits a defendant who timely returns the waiver of service form to answer the complaint within "60 days after the date on which the request for waiver was sent." Obviously, plaintiff may not alter the literal wording of Rule 4(d)(3), and,

if properly served with a notice and waiver form, defendants would have 60 days to answer the complaint. Moreover, it is also clear that plaintiff failed to properly serve any of the three corporations as required by Rule 4(h) of the Federal Rules Civil Procedure. Plaintiff's

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attempt at personal service by delivering the complaint to Clairmont Lodge's property office is not sufficient under Rule 4(h), as he did not serve the complaint on an officer or registered agent. (Clairmont Lodge's Reply Br. [19] at 3.) Similarly, plaintiff's attempt at personal service of Chase Mortgage fails for the same reason, as plaintiff's agent did not serve a copy of the summons and complaint on Chase Mortgage's registered agent or an officer of the corporation.[4] (See Chase Defs.' Mot. to Dismiss [20] at 7, Ex. A.) The return of service form for Resurgence indicates that the complaint and summons were not served on Resurgence Mot. to Dismiss [25] at Ex. RS21.)

Although it appears that plaintiff did not comply with the requirements of Rule 4(d) in his attempt to obtain waiver of service or the requirements of Rule 4(h) for service upon a corporation, the Court noted that plaintiff is proceeding pro se and has no formal, legal training. Typically, under these circumstances, the court would permit plaintiff to re-serve the defendants who were not served properly or dismiss the claims

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4 Indeed, if plaintiff had checked with the Georgia Secretary of State, he would have realized that Chase Mortgage maintains an agent for service of process in Atlanta. (Chase Defs.' Mot. to Dismiss [20] at 3, 7.)

{end of page ten}

against the unserved defendants without prejudice. See Fed. R. Civ. P. 4(m). In the instant case, however, plaintiff's complaint fails to state a claim upon which relief could be grantedagainst defendants Clairmont Lodge, Resurgence, Forrest Homes, and its complaint, in its current garbled state, does not sufficiently state a claim against Chase Mortgage. Because any re-service would be futile on defendants Forrest Homes, Resurgence, and Clairmont Lodge, the court has granted their motions to dismiss for failure to state a claim upon which relief can be granted. With regards to defendant Chase Mortgage, it is possible that plaintiff could redraft his complaint in a manner that would survive a motion to dismiss. Out of deference to plaintiff's pro se status, the Court will deny without prejudice Chase Mortgage's motion to dismiss on 12(b)(6) grounds, but grant, without prejudice, the motion to dismiss on 12(b)(5) service of process grounds. This result will permit plaintiff to refile a complaint against defendant Chase Mortgage and

properly effectuate service of process.

II. Motions to dismiss for Failure to State a Claim Upon Which Relief Can Be Granted

A. Motion to Dismiss Standard

Under Federal Rule 12(b)(6) a court may dismiss a claim for failure to state a claim upon which relief may be granted.

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When deciding whether to dismiss a claim under rule 12(b)(6), a court must construe the complaint in light most favorable to the plaintiff and accept the plaintiffs' allegations of material fact as true. See Beck v. Deloitte & Touche, 144 F.3d 732, 735 (11th Cir. 1998). A court may grant a motion to dismiss if it concludes that plaintiffs cannot prove any set of facts consistent with the complaint which would entitle him or her to relief. See Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984). Defendants bear the very high burden' of showing that the plaintiff cannot conceivably prove any set of facts that

would entitle them to relief." Beck, 144 F.3d at 736.

In addition, "Rule 8 requires that federal courts give pleading a liberal reading in the face of a 12(b)(6) motion to dismiss." GJR Investments, Inc. v. County of Escambia, 132 F.3d 1359, 1369 (11th Cir. 1998). Indeed, "[t]his admonition is particularly true when the parties are proceeding pro se. Courts do and should show leniency to pro se litigants not enjoyed by those with the benefit of a legal education." Id. The Eleventh Circuit has cautioned, however, that "this leniency does not give a court a license to serve as a de facto counsel for a party, . . . or to rewrite an otherwise deficient pleading in order to sustain an action." Id. (citation omitted).

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B. Clairmont Lodge

In paragraph five of plaintiff's complaint,5 plaintiff alleges that Clairmont Lodge initially quoted one rate for his apartment and, while plaintiff was residing in the apartment, raised the rate. (Am Compl. [11] at P. 5) Plaintiff

claims that Clairmont Lodge's refusal to rent the apartment at the quoted rate constitutes rate fraud 42 U.S.C. ss 1981, 1982, and 3601.

In addition, plaintiff contends that "paraders" made verbal assaults as a result of plaintiff's complaint to the rental office regarding the rate hike. (Am Compl. [11] at P. 5.) Plaintiff asserts that the verbal assaults were directed at him because of his race and because of the fact that he had previously brought two lawsuits. (Id.) In the first of these lawsuits, 1:98-CV-2901WBH, plaintiff sued Peach State Mortgage Company, Great Oak Mortgage Company, and Citizens Trust Mortgage Company. (Pl.'s Br. in Opp'n to Judge Hunt's Mot. for

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5 This is the only paragraph in plaintiff's complaint in which Clairmont Lodge is specifically addressed. (See Am. Compl. [11] at P. 5.) Although plaintiff addressed other claims generally to all defendants, plaintiff has offered no factual basis for connecting Clairmont Lodge to the Rivercrest subdivision. Accordingly, the court will specifically address only those claims explicitly directed at Clairmont Lodge.

{end page Thirteen}

Enlargement of Time [7] at Ex. 1.) In the other lawsuit, 1:99-CV-1127WBH, plaintiff sued Banner Ford, Inc., Mr. Transmission, Inc., and Pep Boys, Inc.

Plaintiff's first allegation against Clairmont Lodge is that Clairmont Lodge committed rate fraud by increasing his rent allegedly in violation of three different federal statutes: 42 U.S.C. ss 1981, 1982, and 3601. To state a claim under ss 1981, plaintiff must prove the following elements: " (1) [t}hat plaintiff is a member of a racial minority; (2) [a] n intent to discriminate on the basis of race by the defendant; and (3) [t]hat discrimination concern an 'enumerated activity' (i.e., one of those activities, or rights, directly or indirectly enumerated in the statute)." Baker v. McDonald Corp., 686 F.Supp. 1474, 1481 (S.D. Fla. 1987), aff'd, 865 F.2d 1272 (11th Cir. 1988). Accord Mian v. Donaldson, Lufkin & Janrette Secs. Corp., 7 F.3d 1085, 1087 (2d Cir 1993); Garg v. Albany Ind. Dev. Agency, 899 F.Supp. 961, 967 (N.D.N.Y. 1995). Section 1981 states:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

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42 U.S.C. ss 1981 (1994). The specific right at issue in the instant case is the right "to make and enforce contracts.'

Plaintiff has clearly plead the first element of his prima facie case by alleging in his complaint that he is black. Clairmont Lodge contends that, in his substantive allegation regarding the increased rate for his apartment, plaintiff failed to properly allege that this rate hike was done because of plaintiff's race. (Clairmont Lodge's Mot. to Dismsss [12] at 7.) A review of paragraph five of plain-

tiff's complaint which includes his allegation of rate fraud against Clairmont Lodge demonstrates that plaintiff did not allege that this rate hike was due to purposeful dis crimination as required under ss 1981.

Indeed, plaintiff attaches an exhibit to his complaint which demonstrates the impossibility of recovery against Clairmont Lodge which describes the Lodge's decision to terminate all previous "Innkeeper-Occupant Agreements" betweenit and its tenants and to begin charging its quests on a day to day or week to week basis.[6] pl.'s Resp. to Mand. Disclosures [2] at Ex. C-4 (February 8, 1999 Letter") at 1)

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6 Because Clairmont Lodge changed from a month to month rate to a week to week rate, plaintiff's rate increased slightly.

{end of page fifteen}

In addition, this letter explains that "each quest will be required to complete a new " 'Guest Registration Form'" including the rate change. (February 8, 1999 Letter at 1.) Accordingly, all quests, regardless of their race, were required to agree to a different rate schedule.

Under ss 1981, a plaintiff may not rely on a disparate impact theory to demonstrate that a defendant discriminated against him. See General Building Contractors Ass' v. Pennsylvania, 458 U.S. 375, 389-91 (1982). Cf. Ferril v. Parker Group, Inc., 168 F.3d 1290, 1300 n. 35 (11th Cir. 1998). Indeed, to state a claim for racial discrimination under ss 1981, a plaintiff must show that the defendant purposefully against plaintiff. See General Building Contractors, 458 U.S. at 391; Ferrill, 168 F.3 d at 472; Gonzalez, 161 F.3d 1300 n. 35. In plaintiff's second affidavit, he claims that Clairmont Lodge's rate hike demonstrated discrimination " especially since the majority of the tenants at [C]lairmont Lodge be black or minorities." (Pl.'s Second Aff. [2] at P. ii.) Linerally

construing plaintiff's second affidavit in conjunction with his complaint, this claim resembles a claim of disparate impact and is insufficient to satisfy plaintiff's burden of pleading facts

{end of page sixteen}

demonstrating that Clairmont Lodge harbored an intent to discriminate against him because of his race in violation of ss 1981.7

Plaintiff includes a sentence in the same paragraph which states that "Clairmont Lodge may be properly joined in this action as a conspirator to display it[s] racial hatred against blacks." (Am Compl. [11] at P 5.) This statement, standing alone, is insufficient to meet plaintiff's burden of "alleg[ing] with specificity facts sufficient to show or raise a plausable inference that the defendant purposefully discriminated against him because of his race." Garg, 899 F.Supp. at 967. Accord GJR Investment, Inc. v. County of Escambia, 132 F.3d 1359, 1368 (11th Cir 1998) ("GJR's allegations of discrimina-

tory intent are deficient . . .. using many broad pejorative words to describe the defendants' intentions without giving any specifics.") Keeping in mind the Court's responsibility to afford leniency to a pro se litigant, the court concludes that plaintiff has not stated a claim under ss 1981 for the alleged rate hike.

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7 Indeed, were plaintiff's grievances actionable, ss 1981 would perclude a landlord from increasing the rent at any premises in which a majority of the tenants were a member of a single race group, as such increases would constitute racial discrimination under ss 1981.

{end of page seventeen}

Similarly, plaintiff's allegation that "paraders" in front of his apartment made slanderous comments about him in retaliation for his complaint regarding the rate increase is likewise insufficient to state a claim under ss 1981. Although the Eleventh Circuit has recognized a claim for retaliation under ss 1981 in the employment contract text, see, e.g., Andrews v. Lakeshore Rehab. Hosp., 140 F3d 1405, 1412-13 (11th Cir 1998), the Court concludes that plaintiff has failed to state a claimbased on the alleged "paraders'" slanderous comments. Moreover, plaintiff alleges only that he complained about the rate hike, not about intentional discrimination and, as such, has not properly alleged that he was engaged in "statutorily protected activity" when he complained to the management of Clairmont Lodge about the rate hike. See Clover v. Total Sys. Servs. Inc., 176 F3d 1346, 1350 (11th Cir 1999). Finally, plaintiff does not identify the paraders nor does he allege that Clairmont Lodge had anything to do with the paraders' actions, failing to establish a casual

connection between the allegedly illegal discrimination and any acts of the Clairmont Lodge. See Morgan v. City of Jasper, 959 F.2d 1542, 1547 (11th Cir. 1992). As such plaintiff has failed to establish a claim for retaliation under ss 1981.

{end of page eighteen}

In addition, plaintiff claims that the "paraders" are creating a "disparate impact outside of plaintiff's aparment which particularly defame plaintiff because plaintiff filed two prior suits in this court." (Am Compl. [11] at P.5) Liberally construed, this claim appears to be another retaliation claim, alleging that the "paraders" are retaliating against plaintiff for pursuing his two other lawsuits. In the first of these two lawsuits, 1:98-CV-2901-WBH, plaintiff sued Peach State Mortgage Company, Great Oak Mortgage Company, and Citizens Trust Mortgage Company.(Pl..'s Br. in Opp'n to Judge Hunt's Mot. for Enlargement of Time [7] at Ex. 1) In the other lawsuit, 1:99-CV-1127 WBH, plaintiff sued Banner Ford, Inc., Mr.

Transmission, Inc., and Pep Boys, Inc. Defendant Clairmont Lodge is not a party to either of these two lawsuits and, as such, cannot logically be retaliating against plaintiff for filing the lawsuits. As plaintiff has been unable to state a cognizable claim under ss 1981 for either the alleged rate hike or retaliation, the court **GRANTS** Clairmont Lodge's motion to dismiss plaintiff's ss 1981 claim. Similarly, plaintiff is unable to state a claim for discrimination under 42 U.S.C. ss 1982 and 42 U.S.C. ss 3601, the Fair Housing Act. Section 1982 states: "All citizens of the United States shall have the same right, in every State and

{end of page nineteen}

Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U.S.C. ss 1982 (1994). As Judge Thrash recently noted in Farrior v. H.J. Russell & Co., 45 F.Supp.2d 1358, 1367 (N.D. Ga. 1999) "unlike 42 USC ss 1983 which requires state action, Section 1982

also applies to private actors." In addition, Judge Thrasher observed, "Section 1982 is also unlike Section 1983 in the relatively few cases discussing it's application." Id. Cf. Jackson v. Okaloosa County, 21 F.3d 1531, 1538-41 (11th Cir. 1994) ("the full scope of ss 1982 has never been made clear").

While the full scope of ss 1982 may have never "been made Clear," it is apparent that there are similarities between a claim of discrimination under the Fair Housing Act and under ss 1982. See id. at 1543. See also Farrior, 45 F.Supp. 2d at 1367. The only difference between the two claims is that, under ss 1982, a plaintiff must allege that some intentional discrimination took place." Jackson, 21 F3d 1543. Under the Fair Housing Act, unlike ss 1981 and ss 1982, however, a plaintiff is not required to produce evidence of direct discrimination, but may show that the defendants' action created a significant discriminatory effect." Id. See also

{end of page twenty)

Evans v. Tubbe, 657 F.2d 661, 663 n. 3 (5th Cir 1981): U.S. v. Mitchell, 580 F.2d 789, 791 (5th Cir. 1978).

As ss 1982 requires proof of intentional discrimination, any claims against Clairmont Lodgearising under this statute dismissed for the same reasons that any ss 1981 claims are dismissed.Accordingly the Court **GRANTS** Clairmont Lodge's motion to dismiss plaintiff's ss 1982 claims.

Turning to plaintiff's Fair Housing Act claim, plaintiff alleges that "Clairmont Lodge refused to rent to plaintiff for the quoted rate even though the quoted rate relied on by plaintiff in deciding to continue residing at the Clairmont Lodge. . . . [plaintiff alleges that Clairmont Lodge in refusing to rent to plaintiff for the quoted rate commit rate fraud against plaintiff in violation of 42 US CA ss 3601." (Am. Compl. [11] at P.5) In order to survive a 12(b)(6) motion to dismiss, plaintiff must state a prima facie case of discrimination under the Fair Housing Act. See Farrior, 45 F.Supp. 2d at 1367. "A plain-

Act. The Court notes that the disparate impact theory of recovery is much more difficult to establish than the disparate treatment method. See Pfaff v. U.S. Dept. of HUD, 88 F.3d 739, 747 n.3 (9th Cir. 1996); Moore v. Hughes Helicopters, 708 F.2d 475, 482 (9th Cir 1983). Most courts that have addressed this issue have held that the disparate impact analysis of Title VII is the same analysis to be utilized under the Fair Housing Act. See Harris v. Itahaki, 183 F3d 1043, 1051, 99th Cir. 19 99); Larkin v. Michigan Dept. of Soc. Servs., 89 F.3d 285, 289 (6th Cir 1997); Bangerter v. Orem City Corp., 46 f.3d 1491, 1501 (10th Cir 1995); Doe v. City of Butler.,

{end of page twenty-two}

892 F.2d 315, 323 (3d Cir 1989); Potomac Group Home Corp. v. Montgomery County, 823 F.Supp. 683, 693 E.D. Pa. 1992), aff'd 995 F.2d 217 (3d Cir 1993). Although the Eleventh Circuit has not expressly held that a disparate impact claim under the Fair Hous-

ing Act is analyzed in the smae manner as the comparable Title VII claim, the Eleventh Circuit has, on several occasions, applied Title VII framework to a Fair Housing Claim. See Secretary, U.S. Dept. of HUD ex rel. Herron v. Black, 908 F.2d 864, 870 (11th Cir 1990) (applying Title VII McDonnell Douglas burden shifting analysis to Fair Housing Act claim); United States v. Marengo County Comm'n, 731 F.2d 1546, 1559 n. 20 (11th Cir 1984) (comparing Fair Housing Act to Title VII); EEoc v. Miss College, 626 F2d 477, 482 (5th Cir. 1980) (noting "strong similarities between the language, design, and purpose of Title VII and the Fair Housing Act"). see also Massero v. Mainlands section 1&2 Civic Ass'n, 3 F3d 1472,1476 n. 6 (11th Cir 1993)(noting Propriety of utilizing McDonnell Douglas burden shifting analysis for Fair Housing Act claim). Accordingly, the court

{end of page twenty-three}

will utilize the Title VII disparate impact nframe work to

discuss plaintiff's Fair Housing disparate impact claim.

"In a Title VIIrace discrimination disparate impact case, the plaintiff carries the prima facie burden of demonstrating to a court that a particular employment practice disproportionately burdens one racial group over another." In re Employment Discrimination Litigation, 198 F.3d 1305, 1321 (11th Cir. 1999). "A cause of action based upon disparate impact arises where facially neutral rules or policies are applied in a way that affects the protected class differently from other groups." Bryant Woods Inn, Inc. v. Howard County, 911 F.Supp. 918,939 (D Md. 1996). See also Bangerter, 46 F.3d at 1501 ("A disparate impact analysis examines a facially neutral policy or practice, such as a hiring test or zoning law, for its differential impact or effect on a particular group."). "Indeed, it is the disparity between a single policy's different effects on different groups which form the basis of the cause of Action. Thus, where only one group or class of persons is affected by a particular deci-

sion, there is no disparity in treatment between groups and no ' disparate impact.'" Id. Accordingly, there are two elements to a plaintiff's prima facie claim of disparate impact. These are; "(1) the occurrence of certain outwardly neutral practices, and

{end of page twenty-four}

(2) a significantly adverse or disproportionate impact on persons of a particular type produced by the defendant's facially neutral acts or practices." Gamble v. City of Escondido, 104 F.3d 300, 306 (9th Cir 1997).

Although it is clear in the instant case that defendant's rental policy has a direct effect on all tenants' rent, plaintiff has not alleged that there is any disparate impact on blacks who are renting or would like to rent rooms at the Claimont Lodge. Plaintiff has not alleged that because of the rate hike, blacks are unable to rent housing in the Clairmont Lodge, nor has he alleged any statistical evidence demonstrating that the percentage of blacks

who could not afford to live in the Clairmont Lodge after the rate increase is larger than the percentage of whites who were similarly priced out of the Lodge.[8]

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8 It is clear that 100% of minority tenants and 100% of non-minority tenants are affected by the rent increase. Plaintiff has merely alleged in his second affidavit that there are more blacks and minorities who live at the Clairmont Lodge than whites. (Pl.'s Second Aff. [2] at P. ii.) "A Prima Facie case is established only if challenged housing practice had a significant disproportionate impact on the minorities in the total group to which it was applied." Williams v. 5300 Columbia Pike Corp., 891 F.Supp. 1169, 1178 (E.D. Va. 1995). In this case, the rent increase had precisely the same effect on rent for all individuals renting, as no individuals were spared the rent hike.

{end of page twenty-five}

As the fourth Circuit has explained, an adverse impact "may take one or two forms: "(1) a facially neutral decision may have 'a greater adverse impact on one race than another,' or (2) it may 'perpetuate . . . segregation and thereby prevent . . . interracial association [in the entire community involved].'" Edwards v. Johnston County Health Department., 885 F.2d 1215, 1223 (4th Cir 1989) (quoting Betsey v. Turtle Creek Assoc., 736 F. 2d 983, 987 n. 3 (4th Cir 1984). In this case plaintiff has not demonstrated the impact that this rate hike has had on the availability of lodging for minorities in the Clairmont Lodge, as the alleged impact on all races were the same--everyone experienced a rate increase. See Bryant Woods Inn, Inc., 911 F.Supp. at 940. Cf. Robinson v. City of Friendwood, 890 F.Supp. 616, 622 (S. D. Tex 1995)(concluding that plaintiff failed to state a prima facie claim of disparate impact as "[t]he disputed zoning ordinance, requiring a twenty-five-foot setback from the front property line of all structuresfor residen-

tial use in the city, is neutral on its face and applies generally to all residences of the city"). Accordingly, plaintiff's allegations are insufficient to state a claim under the Fair Housing Act.[9] But cf. Betsey v. Turtle

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9 Otherwise, any landlord that leases to a majority non-white tenant group would be subject to suit under the fair Housing Act any time he raised the rent, even if the rent increase was an across the board increse affecting blacks and whites equally. See Maki v. Laakko, No. 93-Cv-74907-DT, 1994 WL 903893, at *3 (E.D. Mich. July 22, 1994).

{end page twenty-six}

Creek Assoc., 736 F.2d 983, 987 (4th Cir 1984) (concluding that plaintiff stated prima facie case of housing discrimination through disparate impact method by presenting statistics demonstrating that neutral "all-adult conversion program" resulted in the eviction of 74.9 % of non-whites, while only 26.4% of whites were evicted).

Moreover, plaintiff has offered no allegation that supports the inference that Clairmont Lodge actually intended to discriminate. "[A] showing of discriminatory intent under disparate impact requires the the plaintiff give 'some indication . . . which might be suggestive rather than conclusive . . . of discriminatory intent.'" Cruz v. town of Cicero, N. 99-C-3286, 1999 WL 560989 (N.D. Ill. July 28, 1999) (quoting Phillips v. Hunter Trails Community Ass'n, 685 F.2d 184, 190 (7th Cir 1982)). As discussed supra, plaintiff has failed to properly allege that, by increasing the rent, Clairmont Lodge intended to discriminate against blacks or minorities. Hence, the Court

GRANT Clairmont Lodge's motion to dismiss plaintiff's Fair Housing Claim.

C. United States Department of Housing. . . .

The United States Department of Housing and Urban Developement (hereinafter "HUD"), contends that this court lack jurisdiction over plaintiff's claims. (HUD's Motion to Dismiss [18] at 2.) Although plaintiff does not name HUD specifically in the body of his complaint, he claims that all defendants violated four statutes: 42 USC ss 1981, 1982, 1985, and 3601. (Am. Compl. [11] at P.2) Plaintiff does not allege that the United States has waived its sovereign immunity as to these four statutes. Although this failure does not automatically invalidate plaintiff's claims against HUD, the court concludes that the United States has not consented to suit under the four statutes, and, as such, HUD is entitled to sovereign immunity as to plaintiff's claims.

"An action is one against the United States as a sovereign where the judgement sought is to be satisfied from

monies of the federal Treasury, or where the judgement interfers with public administration, or where the judgement's effect is to compel or restrain the goverment's actions." Panola Land Buyers Ass'n v. Shuman, 762 F.2d 1550, 1555 (11th Cir. 1985). The United States is immune from suit unless there has been an unequivocal waiver of immunity. See Daniel v. U. s., 891 F. Supp. 600,

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603 (N.D. Ga. 1995) (Hull, J.) (citing United States v. Nordic Village, Inc., 503 U.S. 30, 32 (1992); United States v. Sherwood, 312 U.S. 584, 586 (1941)). This waiver of sovereign immunity is a prerequisite to subject matter jurisdiction. See id. (citing Sherwood, 312 U.S. at 586). In the instant case, plaintiff seeks actual monetary damages in the amount of $95,000.00 from HUD and $10,000 in additional punitive damages. Com. at 5.)

It is clear that the United States has not waived its sovereign immunity as to claims for monetary damages under ss 1981 and ss 1982. it is well established in this cir-

cuit that the United States has not waived its sovereign immunity to suit under the provision of the civil rights statutes." United States v. Timmons, 672 F.2d 1373, 1380 (11th Cir 19820 (concluding that claims based on violations of sections 1981 and 1982 of the Civil Rights act are barred by sovereign immunity). See also Bernard v. Calejo, 17 F.Supp.2d 1311, 1314 (S.D. Fla. (1998). Likewise, plaintiff's ss 1985 claim is barred by sovereign immunity. See Unimex, Inc. v. United States Dept. of HUD, 594 F.2d 1061, 1061-62 (5th Cir. 1979). In addition, plaintiff's claims under the fair Housing Act, 42 U.S.C. ss 3701, are also barred by sovereign immunity.

{end of page twenty-nine}

See Timmons, 672 F.2d 1380; Unimex, 594 F.2d 1061. Accord McIntosh v. United States, No. 96-5005, 19 96 WL 534147, at *1 (10th Cir Sept. 20, 1996); Davis v. U.S. Dept. of HUD, No. 95-2586, 1996 WL 46 7650, at * (7th Cir. Aug. 14 1996); Parker v. Bancoklahoma Mortg. Co., No. 93-5253, 1994 WL 170789,

at *2 (10th Cir May 5, 1994); Furtick v. Medford Housing Auth., 963 F.Supp. 64, 71-72 (D.Mass.1997); Weaver v.city of Topeka, no. 94-4224-SAC, 1995 WL 783628, at *5 (D. Kan. Dec. 12 1995). Accordingly, HUD's motion to dimiss is **GRANTED.**

D. Chase Manhattan Bank[10] and Chase Manhattan Mortgage Company

Turning to the substance of the complaint as it related to Chase Mortgage, plaintiff's allegations with regard to Chase Mortgage are rambling. Construing them in the most rational light possible, however, it appears that plaintiff is alleging the following. Plaintiff alleges that on June 8, 1999, he attempted to engage in real estate transactions. (Am Compl. [11] at P.3) Plaintiff alleges that he met all qualifications to engage in real estate transactions, that "defendants"

10 Chase Manhattan Bank is not named in plaintiff's Amended Complaint and, as such, is not a defendant in instant lawsuit. (see Am. Compl. [11] at 1.)

Accordingly, Chase Manhattan Bank's motion to dismiss is **GRANTED.**

{end of page thirty)

refused to do business with him, that "defendants" continue to do business with applicants with similar qualifications as plaintiff, and that the property which plaintiff was attempting to purchase "remained available for sale. " (id) Moreover, plaintiff alleges that "defendants" advertise a home loan available at 1% down [and] possible %5.5 interest" but "refused to render such to plaintiff." (Id. at P.4.) Further, plaintiff alleges that "defendants" "relayed a different rate than that relayed to the general public or prospective white homebuyers." (Id.) Plaintiff also claims that "the defendants intentions be to inflict intra-racial discrimination upon the olaintiff by conspiracy." (Id. at P.2) Plaintiff brings this claim under "42 USCA ss 1981, 1982 & 1985(c)" and Fair Housing Act. (Id.) Liberally construed, it seems as if plaintiff is attempting to allege a claim of discrimination in lending in violation

of the Fair Housing Act. See Ivey v. U.S., 873 F.Supp. 663, 671 (N.D. Ga. 1995). Section 3605 of the Fair Housing Act Section 3605(a) provides:

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such transaction, because of race, color, religion, sex, handicap, familial status, or national origin. {end of page thirty-one}

42 USC ss 3605(a) (West 2000)(emphasis added).

As the plain words of the statute makes clear, a plaintiff must prove a racial motivation for the adverse action in question to prevail and must likewise allege a racial motivation to state an actionable claim. See Sofarelli v. Pinellas County, 931 F.2d 718, 722-23 (11th Cir1991) (dismissing Fair Housing Act Claim against sheriff because no allegations of racial animus but permitting claim against plaintiff's neihbors because plaintiff properly alleged

facts sufficient to support a reasonable inference of discrimination). The elements of a prima facie case[11] under the fair housing act are that: (1) the plaintiff is a member of a racial minority; (2) the plaintiff applied for and was qualified to purchase the house in question; (3) the defendant rejected the plaintiff; and (4) the house remained available thereafter.

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11 Were this case proceeding to summary judgement, the three-part burden of proof test developed in McDonnell Douglas would govern the case. See Secretary, U.S. Dept. of HUD-Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir 1990). Under that test, "the plaintiff has the burden of adducing evidence to support a prima facie case of discrimination. Second, if the plaintiff sufficiently establishes a prima facie case, the burden shifts to the defendant to articulate some ligitimate, nondiscriminatory reason' for it action. Third, if the defendant satisfies this burden, the plaintiff has opportunity to produce evidence that that the legitimate reasons asserted by the defendant are in fact mere pretext." Id.

{end of page thirty-two}

See Secretary, U.S, Dept. of HUD ex rel. Herron v.

Blackwell, 908 F.2d 864, 870 (11th Cir 1990).

Although plaintiff alleges that he is black and that the house remained available at some point after the events in question, his allegation of the remaining elements are unclear. As to the third element--that "defendants" rejected the plaintiff--plaintiff alleges that "defendants refused to do business with him." (Compl.[1] at P. 3.) The court is not clear as to what defendant means by this allegation. The Court assumes that this third element requires that the defendant either turn down the plaintiff's application or refused to receive a fully completed application. Yet, in attachments filed by plaintiff, he seems to suggest that he never even made application for a loan because defendant Chase Mortgage required, as part of an application, the applicant's past income tax returns to confirm his claimed income and plaintiff, feeling such a request to be unreasonable, refused to provide such requested paperwork.[12] See Stmt. of Legal Issues [2] at

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12 In another afffidavit, however, plaintiff indicates that he was called back to the bank to complete his loan application, after someone affiliated with one of the defendants had earlier expressed concern about plaintiff's ability to handle the mortgage payments, given his current Chapter 13 bankruptcy status.(Pl.'s Fifth Aff. [2] at P. 7.)

{end of page thirty-three}

P.4; Pl.'s Fourth Aff. [2] at 2-3.) If the court inference is correct, then plaintiff never even applied for a loan and consequently could not have been rejected by defendant Chase Mortgage Hence, as plaintiff does not even allege that he applied for a loan through Chase Mortgage and was declined, his complaint omits allegations sufficient to support this element.

Moreover, in paragraphs one through four of his complaint, plaintiff does not specifically name Chase Mortgage; rather, he simply alleges that all "defendants" refused to do business with him. Without explaining the role that each defendant played in depriving plaintiff of his rights, plaintiff has not given "sufficient detail" to defendants or the Court as to the context of his claims against

each defendant.[13] See Malone v. Chambers County Bd. of Comm'rs, 875 F.Supp. 773, 790-91 (M.D. Ala. 1994) (finding plaintiff's complaint "failed to adequate allege with requisite specificity the facts which amount to a violation of his . . . rights by individual defendants"). See also Coon v. Ga. Pac. Corp., 829 F.2d 1563, 1569 (11th Cir 1987) (citing Uptown People's Community Health Servs. v. Bd. of Comm'rs of Cook County, 647 F.2d 727, 739 (7th Cir

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13 It is doubtful that Judge hunt a federal judge, was in the business of offering financing for potential homebuyers

{end of page thirty-four}

1981))(count in complaint to indefinite; "[w] hile its true that 'notice pleading' is an integral part of the federal rules governing pleading, it still is necessary that something be stated that apprises a defendant of the substance of the allegation"); Ogletree v. McNamara, 449 F.2d 93, 98-99(6th Cir. 1971)("[s]omething more than a conclu-

sory allegation of systematic racial discrimination is required")).

Most Importantly, plaintiff must allege that defendants took adverse action against him with regard to a loan application because of his race. See 42 USC ss 3605. While his complaint contains some conclusory language suggesting "intra-racial discrimination," (Compl. [1] at P. 2), plaintiff does not specifically allege that defendants took whatever action it took against plaintiff because of the latter's race or, more precisely, that defendant Chase Mortgage treated white applicants better or differently than it treated defendant. Inded, in his response to defendant Chase Mortgage's motion to dismiss, plaintiff makes clear his belief that defendant was not receptive to plaintiff's desire for a loan because plaintiff did not or could not provide income tax returns for the last two years. (Pl.'s Resp. Br. [26] at 4-5)[14] While

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14 In his fourth affidavit, plaintiff suggest that Chase Mortgage did was not receptive to plaintiff's loan

{end of page thirty-five}

plaintiff is emphatic in his disagreement with defendant regarding the need for such returns or the appropriate-ness of defendant's request, plaintiff has, in no way, sug gested that this was a requirement that defendant aimed only at black mortgage applicants. Indeed, as every homeowner in the subdivision where plaintiff 's desired home was located was also black and as every one of these black homeowners presumably had to go through the same application process with defendant Chase Mortgage, it is difficult to discern how plaintiff could conceivably make out a case of racial discrimination by defendant Chase Mortgage, either on a discriminatory intent or discriminatory impact theory.

Moreover, plaintiff, in his fourth affidavit, alleges that Ms. Sonjia Williams referred to plaintiff "as a nigger." (Id.)

In this affidavit, plaintiff does not discuss for whom Ms. Sonjia Williams worked at the time that she made this allegedly inflammatory statement, however.[17] Accordingly, plaintiff

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inquiry because plaintiff is a chapter 13 "bankrupt debtor. " (Pl.'s Fourth Affidavit [2] at 2-3.) As discussed supra, however, this allegation, standing alone, is insufficient to state a claim under the fair housing act as plaintiff has not alleged that any concerns by defendant about plaintiff's financial stability reflects racial animus.

17 It appears that Ms. Williams actually worked for Resurgence Marketing & Real Estate, Inc., and not chase

{end of page thirty-six}

cannot attribute this racial charge statement to any employee of Chase mortgage for purposes of alleging direct evidence of discrimination. Hence, plaintiff cannot state a claim against Chase Mortgage under the Fair Housing Act based on these conclusory allegations.[18]

Finally, in the complaint, plaintiff alleges that Chase Mortgage refused to finance his purchase of a home due to the fact that " Plaintiff having file prior suit to this

one under the Federal Fair Housing Act." (Am Compl. at P.2.) As discussed supra, the previous federal lawsuits were not filed against Chase Mortgage, and, as a practical matter, Chase Mortgage has no interest in retaliating against plaintiff for filing prior lawsuits. Accordingly, this allegation cannot support a claim under the civil rights statutes or the Fair Housing Act. Moreover, plaintiff's contention that "defendants' intentions are heard in murmerings and by disparate impact immediately outside of plaintiff's apartment"

Mortgage. Pl.'s Resp. to Mand. Disclosures [2] at Ex. C-9.)

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18 Likewise, plaintiff has not alleged sufficient facts to support an anologous claim under 42 USC ss 1981, 1982 and 1985. See GJR Invst. 132 F3d at 1368; Oladeinede v. City of Birmingham, 963 F2d 1481, 1485 (11th Cir 1992); Garg, 899 F.Supp. at 967. see also discussion supra at 30-35.

{end page thirty-seven of forty-four}

likewise cannot support a claim under any of the four

statutes at issue in the instant case. Hence, for all the above reasons, Chase Mortgage's motion to dismiss for failure to state a claim is well-grounded.

Given the garbled and unclear nature of plaintiff's allegations and in deference to plaintiff's pro se status, however, the court will base its dismissal on plaintiff's failure to properly serve defendant Chase Mortgage. See discussion supra at 6-11. Such a dismissal is without prejudice, which means that plaintiff will have the opportunity to redraft a complaint that sufficiently pleads all necessary allegations and to properly serve that complaint on defendant chase Mortgage.[19] See Fed. Rul. Civ. Proc.4(m) ("If service of the summons and complaint is not made upon the defendants within 12o days after the filing of the complaint, the court, upon motion

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19 That plaintiff may be able to file a new complaint does not mean that he should do so. he has already incurred costs to the prevailing parties, pursuant to 28 USC ss 1920, if these parties choose to file a bill for these cost.

If plaintiff refiles against Chase Mortgage and loses again, he will incur further costs. In addition, plaintiff's complaint against Chase Mortgage appears to border on the frivolous. If plaintiff's only grievance is that chase require him to submit income tax returns, that request does not suggest racial animus or a disparate racial impact. If plaintiff refiles, relying on that theory the court will consider the imposition of attorney's fee against plaintiff for the filing os a frivolous complaint.

{end of page thirty-eight of forty-four}

. . . shall dismiss the action without prejudice as to that defendant.") and Fed. Rul. 12(b)(5) (permitting court to dismiss action for insufficiency of service of process"). See also Hunt v. Department of Air Force, 29 F.3d 583 (11th Cir 1994)(affirming district court's dimissal without prejudice for plaintiff's failure to effectuate service of process upon defendant). Accordingly, defendant Chase Mortgage's Motion to Dismiss on service of process Grounds is **GRANTED;** its motion to dismiss for failure to state a claim is **DENIED WITHOUT PREJUDICE.**

E. Forrest Homes and Resurgence Marketing and Real Estate

For some of the reasons discussed supra, plaintiff's claims against Forrest and Resurgence must fail as they contain nothing other than conclusory allegations of racial discrimination. More importantly, although plaintiff alleges in his complaint that he was qualified to purchase the home from Forrest through Resurgence, the documents plaintiff submitted in support of his complaint clearly demonstrate that he was not qualified to purchase the home. (Pl.'s Resp. to Mand. Disclosures [2] at Ex. C-1.) Indeed, one of the qualifications required to purchase a home is the ability to pay for the home. (See id.; Forrest's Mot. to Dismiss [21] at

{end of page thirty-nine of fourty-four}

Ex. A.) cf Williams v. 5300 Columbia Pike Corp., No. 95-2964,1996 WL 690064, at *3 (4th Cir Dec. 3, 19 96) (plaintiff failed to establish claim under the fair housing act as a matter of law because plaintiff failed to de-

monstrate that she was able to pay the purchase price or obtain sufficient financing to purchase). Plaintiff's complaint and related pleading make clear that plaintiff did not have the requisite purchase price and did not acquire financing sufficient to purchase the home.[20] (See Pl.'s Fourth affidavit at 2-3; Am Compl. [11] at P.4.) without the sufficient funds to purchase the home, plaintiff cannot demonstrate that he "met all relevant qualification" to purchase the home. See Hickson, 805 F. Supp. at 1572.

As the fourth Circuit has noted, "[T]he Fair Housing Act is not so expansive that it would require sales or rentals of residences to those who concede that they are unable to pay the price faced by all other buyers or leasers." Williams, 1996 WL

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20 Plaintiff, in his fourth affidavit, suggest that he had the proper income to obtain financing for the purchase of the home, but because of the lenders' insistence on utilizing his income tax returns, he was not able to obtain a

loan. (Pl.'s Fourth Aff. [2] at P.4) This fact, however, does not change the fact that plaintiff was not qualified to purchase the home, as he did not obtain financing, a stated condition precedent to Forrest's duty to perform under the sales contract. (See Pl.'s Resp. to Mand. Disclosures [2] at Ex. C-1; Forrest Mot. to Dismiss [21] at Ex. A.)

{end of page fourty of fourty-four}

690064, at *3. In the instant case, plaintiff concedes that he was unable to obtain financing and, as such, could not tender the purchase price for the house. Accordingly, plaintiff's claims against Forrest and Resurgence[21] under the Fair Housing Act must be dismissed. Similarly, plaintiff has not sufficiently alleged claim under 42 U.S. C. ss 1981, 1982, and 1985, and those claims must be dismissed as well.[22]

F. Judge Hunt

Judge Hunt claims that he is shielded from liability on grounds of judicial immunity. Indeed, it has long been established that members of the judiciary are entitled to absolute in civil suits against them for monetary

21 Although plaintiff's allegation in his fourth affidavit that a Resurgence employee, Ms. Williams, called him a nigger, could support an inference of discrimination in the appropriate case, plaintiff's claim fails because he has not properly alleged facts to support his prima facie case of housing discrimination, as his allegations, coupled with the materials submitted along with his complaint, conclusively demonstrate that plaintiff was not qualified to purchase the home due to his inability to obtain financing. Thus, even assuming that Ms. Williams harbored racial animus against plaintiff, her subjective feelings are beside the point as plaintiff had no money to pay for the house. (Of course, as noted supra, it is difficult for plaintiff to make out a claim of racial dicrimination in the instant case, where every purchaser of a home in the Rivercrest sub division was black.)

22 In addition, plaintiff has not stated a valid retaliation claim for the reasons discussed supra at 17-19,37

{end page forty-one of fourty-four}

damages.[23] See Pierson v. Ray, 386 U.S. 547 (1967). See also Dorman v. Simpson, 893 F.Supp. 1073, 1080 (N.D. Ga. 1995)(Hull, J.0. In Stump v. Sparkman, 435 U.S. 349, 362 (1978), the supreme court adopted a two-part test to determine whether a judge enjoys the

absolute immunity of the doctrine of judicial immunity. First, the court must look to whether the judge dealt with the plaintiff in judicial capacity. Id. Second the court must decide if the judge acted in clear absence of all jurisdiction." Id. at 357. See also Harris v. Deveaux, 780 F.2d 911 (11th Cir 1986).

To determine whether a judge's conduct constituted a judicial act, the court must focus on whether:

(10 the precise act complained of . . . is a normal judicial function; (20 the events involved occurred in the judge's chambers; (3) the controversy centered around a case pending before the judge; and (4) the confrontation arose directly and immediately out of a visit to the judge in his official capacity.

Harris, 780 F.2d at 914 (citing Harper v. Merckle, 638 F.2d 848 (5th Cir 1981)). In this case, all of the factors are present. Judge Hunt's pertinent conduct, failing to appoint an attorney to represent plaintiff in case number

1:98-CV-2901-WBH, was a

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23 In the instant case, plaintiff seeks $95,000 in actual damages and $10,000 in punitive damages from Judge Hunt. (Am Compl. [11] at 5.) Plaintiff does not seek injunctive relief against Judge Hunt.
{end of page forty-two of fourty-four

normal judicial function in a case pending before the judge, occurred in orders issued by the judge, and arose from dealings with the judge in his official capacity. See Rolleston v. Eldridge, 848 F.2d 163 (11th Cir 1988) As such, Judge Hunt's actions meet the first part of the test for judicial immunity.

The second prong of the test explores whether the judge acted in the "clear absence of all jurisdiction" The ruling by judge Hunt was in response to plaintiff's motion to appoint counsel. (Am. Compl. at P.6.) The applicability of judicial immunity does not depend on the determination of nice question of jurisdiction.'" Id. (quoting Williams v. Sepe, 487 F.2d 913, 914 (5th Cir 1973)). Since Judge Hunt simply responded to a motion filed in

his court, he did not act in the "clear absence of jurisdiction." As Judge Hunt is entitle to full judicial immunity under the two-part test of Stump v. Sparkman, plaintiff's claims for damages against him must be dismissed.

CONCLUSION

For the foregoing reasons, defendant Clairmont Lodge's Motion to Dismiss [12] is **GRANTED** , defendant Department of HUD's Motion to Dismiss [18] is **GRANTED**, defendant Chase Manhattan Bank and Chase Manhattan Mortgage Corporation's Motion to Dismiss [20] is **GRANTED**

{end of page fourty-three of fourty-four}

WITHOUT PREJUDICE, defendant Forrest Homes, Inc.'s Motion to Dismiss [21] is **GRANTED**, defendant Resurgence Marketing and Real Estate, Inc.'s Motion to Dismiss [22] is **GRANTED,** plaintiff's motion for cost of personal service [28] id **DENIED AS MOOT,** defendant Chase Manhattan Bank and Chase Manhattan Mortgage Corporation's Motion to Extend Time to

Respond to Plaintiff's Motion for costs [29] is **DENIED AS MOOT,** and defendant Willis B. Hunt's Motion to Dismiss [40] is **GRANTED.**

The CLERK is directed to CLOSE this case.

SO ORDERED, this 27 day of July, 2000.

signed:

JULIE E. CARNES
U.S. DISTRICT JUDGE

{end of page fourty-four of fourty-four}

IN THE UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 00-14275

District Court Docket No.
99-12218-CV-JEC-1

Thomas G. Dean
Plaintiff-Appellant

Versus

The Chase Manhattan Bank,
Forrest Homes,
Resurgence Marketing & Real Estate Inc.,
U.S. Department of Housing & Urban Developement,
Willis B. Hunt, Clairmont Lodge,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

JUDGEMENT

It is hereby ordered, adjudge, and decreed that the attached opinion, included herein by reference, is entered as the judgement of this court.

Entered: June 6, 2001
For the Court: Thomas K. Kahn, Clerk
By: McCombs, Elain

ISSUE AS MANDATE
JUL 30 2001
U.S. COURT OF APPEALS
ATLANTA, GA.